



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 23, 1996

Mr. John F. Olson  
Attorney for the City of Friendswood, Texas  
Three Allen Center, Suite 3485  
333 Clay Street  
Houston, Texas 77002

OR96-0232

Dear Mr. Olson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID #37629. The request is for a reconsideration of Open Records Letter No. 95-1273 (1995) which concluded that a confidentiality rule adopted by the Texas Department of Aging (the "department") would only be valid (as applied to the subject open records request) if there was specific statutory authority permitting the department to promulgate such a rule.

The City of Friendswood (the "city") received an open records request for the roster of senior citizens who participate in programs at the city's Senior Citizens Center. You contend that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with title 40, section 270.1 of the Texas Administrative Code and in accordance with the federal regulations contained in title 45, section 1321.51 of the Code of Federal Regulations. The rule adopted by the department makes confidential all information about or obtained from clients and held by the Senior Citizens Center in accordance with the provisions of federal law establishing the program.

The Legislature enacted<sup>1</sup> the provisions enabling the department, formerly the Governor's Committee on Aging, to continue the receipt of funds available to states through the Older Americans Act's provisions for grants to state and community programs on aging. 42 U.S.C.A. §3021 *et seq.*; Hum.Res.Code §101.001 *et seq.*

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<sup>1</sup> The Texas Constitution was amended in order to grant state aid to needy aged persons. Tex. Const. art. III, §51-a. The amendment allowed Texas to enter into federal-state cooperative agreements to provide for the payment of assistance to the elderly, among other services. *Tex. Const. art. III, §51-a interpret. commentary (Vernon 1962).*

Prior to the receipt of federal funding for the department, it was necessary for the State of Texas to provide a written assurance to the federal government that the funds would be expended in accordance with federal objectives and in compliance with federal regulations. Accordingly, the department submitted a state plan to the Commissioner on Aging at the federal Department of Health and Human Services. *1993-1995 STATE PLAN, The Texas Department on Aging*, (January 29, 1993). The plan was approved.

The Texas Plan, under its verification of intent and standard assurances, certifies that the administration of the State Plan shall be in compliance with the required assurances and provisions of the Older Americans Act of 1965 (the "Act"), as amended. *Id.* at p.1. It assures the federal government that each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in state policies under title 45, section 1321.11 of the Code of Federal Regulations. *Id.* at p.5.

The federal regulation requires that the department develop policies governing all aspects of programs operated. 45 C.F.R. §1321.11. The department is responsible for enforcement of these policies. 45 C.F.R. §1321.11.

One provision deals specifically with the confidentiality concern at issue in this open record request. 45 C.F.R. §1321.51. Specifically, section 1321.51 provides that:

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State or local monitoring agencies.

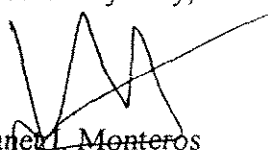
The department has incorporated this particular provision within one of its rules under title 40, section 270.1(d) of the Texas Administrative Code in accordance with its responsibility under title 45, section 1321.11 of the Code of Federal Regulations to develop policies governing all aspects of programs operated, whether operated directly by the department or under contract.

The need for compliance with the methods of administration required by federal regulation was noted in an opinion from the Attorney General's office. Attorney General Opinion MW-142 (1980). That opinion dealt with the department's predecessor, the Governor's Committee on Aging. Specifically, it noted that whenever the federal government finds a state has failed to comply substantially with any provision of the Older Americans Act in the administration of the state plan, the secretary has the authority to stop federal funds, after notice and an opportunity for the state to be heard. Attorney General Opinion MW-142 (1980). That decision also notes that the performance of the department's services must be consistent with federal regulations in order to avoid interruption of federal funds. *Id.* at 2.

Consequently, upon further review and in view of the applicable statutes, and federal and state regulations, we amend the previous Open Records Letter No.95-1273 (1995) to make confidential under section 552.101 the senior citizens roster. Access to the information can only be provided with the informed consent of the person or of his or her legal representative, court order, or program monitoring.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet L. Monteros  
Assistant Attorney General  
Open Records Division

JIM/ch

Ref.: ID# 37629

Enclosures: Submitted documents

cc: Rev. Oral Yover  
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(w/o enclosures)